~~DJH~~

267 NLRB No. 1

~~D-9978~~
Cl~~eveland, OH~~

UNITED ~~STATES OF AMERICA~~

BEFORE ~~THE NATIONAL LABOR~~ RELATIONS BOARD

HRI, INCOR~~PORATED~~ d/b/a
HI-RO INDU~~STRIES~~

and

Cases 8-~~CA-~~15544 and
8-~~CA-~~15786

MA~~TT~~ SE~~KANIC~~, ~~an individual~~

August 9, 1983

DECISION AND ORDER

By Chairman Dotson and Members Jenkins and Hunter

Upon a charge filed on 24 February 1982, amended on 29 April 1982, and an additional charge filed on 4 June 1982, by Matt Sekanic, herein called the Charging Party, and duly served on HRI, Incorporated d/b/a HI-RO Industries, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued an amended consolidated complaint on 20 July 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and amended consolidated complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated Section 8(a)(1) and

(3) of the Act by threatening employees, soliciting grievances, promising benefits, interrogating employees, creating the impression of surveillance and that union organization was futile, and by laying off and/or terminating employees because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Initially, Respondent filed an answer to the complaint in Case 8-N-CA-N-15544, denying the commission of any unfair labor practices. However, on 28 June 1982, Respondent filed with the Regional Office a document stating it wished to withdraw its answer to the complaint in that case. Respondent further stated that, with regard to Case 8-N-CA-N-15786, it would not be "contesting the matter and would permit the [B]oard to rule in any way they saw fit#.f.f.f." Thereafter, Respondent did not file an answer to the amended consolidated complaint.

On 29 November 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 6 December 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not respond to the Notice To Show Cause, and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The amended consolidated complaint served on Respondent stated that, unless an answer was filed within 10 days from the service thereof, ''all of the allegations in the amended consolidated complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Although Respondent filed a timely answer to the complaint in Case 8-CA-15544, it subsequently withdrew that answer. The withdrawal of an answer has the same effect as a respondent's failure to file an answer. Furthermore, with regard to Case 8-CA-15786, Respondent stated it would not be contesting the matter. Finally, Respondent has not filed an answer to the amended consolidated complaint nor has it responded to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth

above, the allegations of the amended consolidated complaint are deemed admitted and found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## Findings of Fact

### I. The Business of Respondent

Respondent is, and at all times material herein has been, an Ohio corporation with its plant and office in Cleveland, Ohio, where it is engaged in the manufacture or fabrication of sheet metal and tubing products. Annually, in the course and conduct of its business, it receives gross revenues in excess of $750,000 and ships goods valued in excess of $50,000 directly to points outside the State of Ohio.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. The Labor Organization Involved

The United Steelworkers of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

### III. The Unfair Labor Practices

At a meeting held at its facility in September 1981, Respondent created the impression that the employees' union activities were under surveillance and that such activities were futile. It also solicited grievances from employees in order to

discourage their union activities and promised employees that they would receive improved benefits, including, but not limited to, a raise in pay, better seniority rights, better working conditions, and health insurance if they did not select a union as their collective-bargaining representative. At the same time, Respondent threatened the employees with plant closure if they did select the Union.

Also in September 1981, Respondent interrogated an employee concerning his union activities, membership, and sympathies; solicited grievances from employees in order to discourage their union activities; promised benefits to an employee and promised another employee that the employee's grievances would be favorably resolved; and threatened an employee with plant closure if the Union were selected. In December 1981, Respondent again created the impression that an employee's union activities were under surveillance and, in February 1982, Respondent again interrogated an employee concerning his union membership, activities, and sympathies.

On or about 8 January 1982, employees Matt Sekanic, Theresa Galarza, Michael Riviera, Laura Karn, Shirley Webb, Aaron Johnson, Michael Maldonardo, Renee Ortz, Leonard Morris, and Arthur L. Edmonds left Respondent's facility during working hours in protest of Respondent's admitted inability to pay wages due them. On or about 11 January 1982, Respondent laid off and/or terminated the aforementioned employees because of their concerted activities for the purpose of collective bargaining or other mutual aid or protection.

By all and each of the acts set forth above, Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act. Accordingly, we find that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Since on or about 24 and 31 December 1981, Respondent issued paychecks to the Charging Party which were returned marked insufficient funds. During the period of 11 January 1982 through 21 May 1982, Respondent made reimbursements to all its employees who had received similar paychecks with the exception of the Charging Party, despite the Charging Party's continuous requests for payment. Respondent engaged in such conduct because of the Charging Party's union activities. Accordingly, we find that Respondent violated Section 8(a)(3) and (1) by discriminatorily refusing to reimburse the Charging Party for paychecks issued to him which were returned for insufficient funds.

~~IV. The Effect of the Unfair Labor Practices Upon Commerce~~

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. The Remedy

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, we shall order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act. Specifically, we shall order that Respondent offer the terminated and/or laid-off employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. We shall further order that Respondent make the employees whole by paying them backpay for any loss of earnings or other benefits they suffered by reason of Respondent's unlawful conduct. The Charging Party shall also be made whole for Respondent's discriminatory refusal to reimburse him for the paychecks returned for insufficient funds. Backpay shall be computed as prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest thereon to be computed in accordance with Florida Steel Corporation, 231 NLRB 651 (1977).[1]

In view of Respondent's representation in its letter to the Regional Office that it has terminated its operations, we shall provide for mailing of the notice to Respondent's employees. Northridge Knitting Mills, Inc., 225 NLRB 1054 (1976).

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[1] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

## Conclusions of Law

1. HRI, Incorporated d/b/a HI-RO Industries, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The United Steelworkers of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct, Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) of the Act:

(a) Creating among its employees the impression that their union activities would be futile.

(b) Creating the impression that its employees' union activities were under surveillance.

(c) Soliciting employee grievances in order to discourage their union activities.

(d) Interrogating employees concerning their union membership, activities, and sympathies.

(e) Promising employees benefits, that their grievances would be resolved favorably, and that their conditions of employment would be improved if they did not select the Union as their collective-bargaining representative.

f) Threatening employees with plant closure if they selected a collective-bargaining representative.

(g) Laying off and/or terminating employees because they engaged in protected concerted activities.

4. By discriminatorily refusing to reimburse the Charging Party for paychecks issued to him which were returned for insufficient funds, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, HRI, Incorporated d/b/a HI-RO Industries, Cleveland, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Creating among its employees the impression that their union activities would be futile.

(b) Creating the impression that its employees' union activities were under surveillance.

(c) Soliciting employee grievances in order to discourage their union activities.

(d) Interrogating employees concerning their union membership, activities, and sympathies.

(e) Promising employees benefits, that their grievances would be resolved favorably, and that their conditions of employment would be improved if they did not select the Union as their collective-bargaining representative.

(f) Threatening employees with plant closure if they selected a collective-bargaining representative.

(g) Laying off and/or terminating employees because they engaged in protected concerted activities.

(h) Discriminating against employees with regard to any term or condition of employment because of their union activities.

(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer Matt Sekanic, Theresa Galarza, Michael Riviera, Laura Karn, Shirley Webb, Aaron Johnson, Michael Maldonardo, Renee Ortz, Leonard Morris, and Arthur L. Edmonds immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of pay suffered by reason of the discrimination against them, with interest, in the manner set forth in the section of this Decision entitled ''The Remedy.''

(b) Expunge from its files any reference to the layoffs and/or terminations of the said employees and notify them in writing that this has been done and that evidence of their unlawful layoffs and/or terminations will not be used as a basis for future personnel actions against them.[2]

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[2] See Sterling Sugars, Inc., 261 NLRB 472 (1982).

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Cleveland, Ohio, facility copies of the attached notice marked ''Appendix.''[3] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material. In the event Respondent has terminated its operations at the Cleveland, Ohio, facility, mail a copy of the attached notice to each employee who was on its final payroll and to the employees named above. Copies of said notice, on forms provided by the Regional Director for Region 8, shall, after being duly signed by Respondent's representative, be mailed by Respondent immediately upon receipt thereof.

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[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 9 August 1983

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Donald L. Dotson, Chairman

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Howard Jenkins, Jr., Member

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Robert P. Hunter, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT lay off and/or terminate our employees because they engage in protected concerted activities.

WE WILL NOT create the impression that our employees' union activities are futile or that such activities are under surveillance.

WE WILL NOT solicit grievances from our employees in order to discourage their union activities.

WE WILL NOT promise to resolve employee grievances favorably if they cease to support the United Steel Workers of America, AFL-CIO, CLC.

WE WILL NOT promise our employees benefits or improved working conditions if they cease supporting the Union.

WE WILL NOT interrogate our employees concerning their union membership, activities, and sympathies.

WE WILL NOT threaten employees with plant closure if they select a collective-bargaining representative.

WE WILL NOT discriminate against employees with regard to any term or condition of employment because of their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Matt Sekanic, Theresa Galarza, Michael Riviera, Laura Karn, Shirley Webb, Aaron Johnson, Michael Maldonardo, Renee Ortz, Leonard Morris, and Arthur L. Edmonds immediate and full reinstatement to their former positions at our Cleveland, Ohio, facility, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make Matt Sekanic, Theresa Galarza, Michael Riviera, Laura Karn, Shirley Webb, Aaron Johnson, Michael Maldonardo, Renee Ortz, Leonard Morris, and Arthur L. Edmonds whole with interest for any loss of earnings resulting from their layoffs and/or terminations.

WE WILL expunge from our files any reference to the layoffs and/or terminations of the employees named above and WE WILL notify them in writing that this has been done and that evidence of their unlawful layoffs and/or terminations will not be used as a basis for future personnel actions against them.

HRI, INCORPORATED d/b/a HI-RO INDUSTRIES

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Anthony J. Celebrezze Federal Building, Room 1695, 1240 East 9th Street, Cleveland, Ohio 44199, Telephone 216--522--3126.